Supreme Court, U.S.
FILED
AUG 13 1993
OFFICE OF THE CLERK

No. 92-1934

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

J.M., INDIVIDUALLY,
Petitioner,

- against -

V.C.,
Respondent.

On Petition for a Writ of Certiorari
To the Supreme Court of New Jersey

PETITIONER'S REPLY BRIEF TO RESPONDENT'S OPPOSITION

Harold J. Cassidy, Esq.
Counsel of Record
Cassidy, Foss & San Filippo
225 Broad Street
P. O. Box 896
Red Bank, New Jersey 07701
(908) 741-2525
Attorney for Petitioner

BEST AVAILABLE COPY

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

JURISDICTION 1

A. STANDING 1

B. STATE ACTION 5

THE STATEMENT OF THE CASE 13

A. PROCEDURAL MATTERS 13

B. THE RECORD ON THE SCIENTIFIC AND MEDICAL FACTS 15

WHY PETITION SHOULD BE GRANTED. 16

CONCLUSION 20

TABLE OF AUTHORITIES

Baker v. Carr,
369 U.S. 186 (1962) 3

Barrows v. Jackson,
346 U.S. 249 (1953) 3, 4, 5

Barton v. Maryland,
395 U.S. 784 (1969) 13

Blum v. Yartesky,
457 U.S. 991 (1982) 9

Buchanan v. Warley,
245 U.S. 60 (1917) 4,5

Carey v. Population Services Intl.,
431 U.S. 678 (1977) 4

Civil Rights Case,
109 U.S. 3 (1883) 10

Craig v. Boren,
429 U.S. 190 (1976) 4

Doe v. Bolton,
410 U.S. 179 (1973) 5

Eisenstadt v. Baird,
405 U.S. 438 (1972) 4

Fontany v. Fontany,
122 A.2d 593 (1956) 5, 18

Griswold v. Conencticut,
381 U.S. 479 (1965) 3, 4

Grovey v. Townsend,
295 U.S. 45 (1935) 13

Jackson v. Met. Ed. Co.,
419 U.S. 345 (1974) 7, 12, 13

Jersey Shore Medical Center - Fitkin Hospital, et al. v. Estate of Baum,
417 A.2d 1003 (1980) 10

Kansas City v. Ashcroft,
462 U.S. 476 (1983) 12

Kentucky Finance Co. v. Paramount Auto Exchange,
262 U.S. 544 (1923) 10

Market Street R. Co. v. Railroad Comm'n,
324 U.S. 548 (1945) 13

Moose Lodge No. 107 v. Irvis,
407 U.S. 163 (1972) 12, 13

NAACP v. Claiborne Hardware Co.,
458 U.S. 886 (1982) 8

NCAA v. Tarkanian,
488 U.S. 179 (1988) 7, 11

New York Times v. Sullivan,
376 U.S. 254 (1964) 8

North Dakota Pharmacy Board v. Snyder's Tows,
414 U.S. 156 (1973) 13

Pierce v. Society of Sisters,
268 U.S. 510 (1925) 3, 4

Planned Parenthood of Central Missouri et al v. Danforth, 428 U.S. 52 (1976) 4, 18

Planned Parenthood Kansas City v. Ashcroft,
462 U.S. 476 12

Planned Parenthood of S.E. Pa. v. Casey,
505 U.S. _, 112 S.Ct. 2791 (1992) . . . . . passim

Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson, 201 A.2d 537 (1964) 9

Reitman v. Mulkey,
387 U.S. 369 (1967) 12

Robinson v. Florida,
378 U.S. 153 (1964) 7

Roe v. Wade,
410 U.S. 113 (1973) . . . . . passim

Shelley v. Kraemer,
334 U.S. 1 (1948) 7, 8, 9

Singleton v. Wolff,
428 U.S. 106 (1976) 4, 5

Snapp v. Puerto Rico,
458 U.S. 592 (1982) 19

Sullivan v. Little Hunting Park,
396 U.S. 229 (1969) 4, 5

Truax v. Raich,
239 U.S. 33 (1915) 3

Virginia v. Rives,
100 U.S. 313 (1880) 10

Webster v. Reproductive Health Services,
109 S.Ct. 3040 17

CONSTITUTIONAL PROVISIONS:

Fourteenth Amendment, §1,
Constitution of the United States ..... passim

Article I, §1 N.J. Const. 1947 ..... passim

STATUTES:

N.J.S.A. 2A:87-1 11

NEW JERSEY ADMINISTRATIVE CODES:

N.J.A.C. 13:35-4.2 (b-g) 11, 12

V.C.'s arguments on jurisdiction, the procedural posture of the case, and her response to the reasons why certiorari should be granted, taken together, amplify the reasons why the writ should be granted: the prior case law simply bears no relevance to the substantive issues of when life begins and whether a child possesses rights prior to birth based upon the child's personal interest in life. The non-responsive nature of V.C.'s brief reflects the fact that the "state's rights" genre of cases (now arguably exhaustive on questions concerning a woman's privacy interest when examined independently of the child's rights) never decided the issues presented by this case. Yet, their resolution is necessary to achieve justice and repose in the law. This case is the best opportunity for this Court to resolve them.

JURISDICTION

A. STANDING

1.

V.C. argues J.M. lacks "standing" to prosecute his child's rights because the child has not been previously given the legal status of "person" (Res. Br. at p. 1-3). This proposition and all the cases cited by V.C. are based upon the *Roe* Court's inability to determine when life begins. These cases simply reflect that this Court hasn't *yet* determined whether or not there exists a human being to have rights. Because the legal rights of the child have

never been examined in the context of the child's established existence and personal interest in life, the cases V.C. cited have no application. These cases hold that *nobody*[1] can have standing because a child is not known to exist - the very question that this case seeks to resolve. The cases have no application when it is established that the second person, the child, exists. (see Pet. at p. 12-18).[2]

2.

J.M. seeks review of his own individual rights, including his right to defend the life of his child, and to be the party to prosecute his child's interests as part of his own parental rights. The standing issue is implicated in both J.M.'s individual rights (as part of his parental rights to prosecute the child's claim) and the child's rights. The fact of the child's existence and the nature of the child's rights are integral elements of the standing issue in both sets of rights, because standing requires a determination of a suf-

[1] None of the cases cited involve a father as plaintiff in a civil suit litigating the child's best interests.

[2] To say, as V.C. does, that no one can have standing to prosecute the child's rights, because the child has not yet been recognized, is to argue that this court can never review the question in the first place. For the Court to determine whether the child possesses rights prior to birth the Court must recognize standing in someone, and the natural father has the greatest relationship with the child for that purpose (Pet. at p. 54-60).

ficient nexus between the litigant and the individual rights he seeks to raise.[3] See e.g., *Griswold v. Connecticut*, 381 U.S. 479, 481 (a doctor could raise the rights of a patient).[4]

"Standing" is an element of the "adverse parties" requirement of Article III and concerns whether the party seeking relief has:

> Alleged such a personal status in the outcome of the controversy as to assure that concrete adverseness which sharpens the preservation of issues upon which the court so largely depends for illumination of difficult constitutional question. *Baker v. Carr*, 369 U.S. 186, 204 (1962).

The standing issue inextricably connects the rights of both father and child, because it relates to the harm each shall endure, and embodies the right each separately possesses to have the father stand in place of the child. When a father seeks to prevent the death of his child there can be little doubt there is a concrete adverseness to those he opposes. If V.C.'s argument were to be accepted, then, in New Jersey, where the state authorizes terminat-

[3] On this Petition V.C. has not directly contradicted the scientific and medical facts which establish that the child is a human being, and that the child experiences pain prior to birth. The New Jersey Courts did not make a finding of fact adverse to J.M.'s position. For the purposes of this petition this Court must resolve all factual inferences in favor of J.M.

[4] e.g. see also, *Truax v. Raich*, 239 U.S. 33 (an employee may assert the rights of his employer); *Pierce v. Society of Sisters*, 268 U.S. 510 (the owners of private schools could assert the rights of potential pupils and their parents); and *Barrows v. Jackson*, 346 U.S. 249 (a white defendant, party to a racially restrictive covenant, could raise the rights of prospective negro purchasers, although no negro was a party to the suit); see Pet. at p. 54-60.

ing the child's life even after "viability", the child would lose his or her life for lack of access to court based on the cruel fiction that neither the child nor the child's father has a sufficient interest in a father defending the child's life. If the absurdity of this pretense is not manifest, it can at least be said that such a result is completely inconsistent with this Court's prior opinions on the subject.

This Court has often recognized the standing of a litigant to prosecute the rights of another if the litigant demonstrates: [1] a degree of injury to himself, and [2] that, under the circumstances present, the injured parties whom they seek to represent would probably be unable to assert their own rights. See e.g., *Barrows v. Jackson*, 346 U.S. 249 (1953); *Buchanan v. Warley*, 245 U.S. 60 (1917); *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Planned Parenthood v. Danforth*, 428 U.S. 52, 62 (1976); *Craig v. Boren*, 429 U.S. 190, 192-197 (1976); *Carey v. Population Services Intl.*, 431 U.S. 678, 682-684 (1977); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). This requirement was expressly stated by Justice Blackmun in *Singleton v. Wolff*, 428 U.S. 106, 112 (1976). The second of these requirements is obviously satisfied, since the child's rights could not be litigated unless someone other than the child is extended standing.

The first requirement, the harm to J.M., is equally clear and directly related to his child's loss. A parent's loss of his child's life (and the destruction of his own rights to defend his child, maintain a relationship with his child, procreate, equal protection, and to discharge his duties to his child) is a harm to him of a greater magnitude than loss of money (e.g. *Singleton v. Wolff, supra.*); subjection to money damages (*Barrows v. Jackson, supra.*); expulsion from a private club (*Sullivan v. Little Hunting Park, supra.*); compulsion to convey property (*Buchanan v. Warley, supra.*); or potential exposure to criminal charges for conduct voluntarily engaged in to earn money (*Doe v. Bolton*, 410 U.S. 179, 188-189 (1973)). If this Court recognizes the standing of doctors who seek to assist in terminating the life of children, then clearly the Court, by the same principles of law, must recognize the standing of a father who seeks to save his child's life.

B. STATE ACTION

When J.M. filed his complaint on March 9, 1992 he sought to litigate his child's best interests, a function served by New Jersey Courts on a daily basis. New Jersey resolves disputes between two parents, who have conflicting plans for their child, based upon the child's best interests. See *Fontany v. Fontany*, 122 A.2d 593 (1956). V.C. claimed that she had a constitutional right

to take the child's life regardless of New Jersey law. Obviously the New Jersey court and this Court have the jurisdiction to determine if she has a right, despite the child's rights, of the nature and scope she claims.

J.M.'s contentions, that the child is a human being, who experiences pain, and who has rights, are relevant to determine the magnitude and scope of V.C.'s rights. V.C.'s rights can only be determined by examining the facts and the competing interests of the child and father. Because the trial judge correctly recognized that the case presented issues never before decided, he entered an injunction. In fact, when V.C. appealed the action of the court, she did not claim that there was no "state action." To the contrary, she argued that the court orders constituted state action and argued, therefore, that her constitutional rights were violated.[5] Under the circumstances of this case, the original order of the court constituted direct state action and the court was required to consider the rights of all of the parties.

The very existence, nature and scope of the right V.C. claims is the very matter for the Court to determine in this case. She conceded that the State Supreme Court had the jurisdiction to de-

[5] See Res. Br. where she admits that the Order of the Chancery Judge constitutes state action. Res. Br. at 11, text and n. 7.

termine the issue. Surely this Court has the power to determine if the State Court was correct in its interpretation of the Fourteenth Amendment. It violates reason to suggest that New Jersey and this court must enforce her claimed constitutional "right" to abortion, but both are powerless to decide if she even has such a right.

Even if the orders of the New Jersey courts did not constitute a direct act of the state, there was significant state involvement in V.C.'s conduct which impermissibly aided it. *Robinson v. Florida*, 378 U.S. 153 (1964); *NCAA v. Tarkanian*, 488 U.S. 179 (1988); *Shelly v. Kraemer*, 334 U.S. 1 (1948). The question is whether the state "puts its own weight on the side of the offending conduct." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-358 (1974).

In the present case the acts of New Jersey - those of its judicial, legislative and executive branches, separately and in combination - not only encouraged or aided V.C.'s conduct, but V.C. probably could not have taken the child's life without the state's aid. New Jersey: [1] created a legal framework governing the conduct of a mother to take her child's life; [2] directly involved itself in the termination of the child's life through the executive branch; and [3] its court advanced her goal of taking the child's life.

(a) Involvement of the Court.

Where a state's court order assists or advances the offensive private conduct, the involvement of the court constitutes "state action." *Shelley v. Kraemer*, 334 U.S. 1 (1948). This Court observed in *New York Times v. Sullivan*, 376 U.S. 254 (1964):

> Although this is a civil law suit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms...It matters not that that law has been applied in a civil action and that it is common law only...The test is not the form in which state power has been applied, but, whatever the form, whether such power has in fact been exercised. *Id.* at 265.

In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), a lawsuit between private parties, the Court held the application of state rules which restrict constitutional rights constitutes "state action" under the Fourteenth Amendment. Id. 916n. 51. In the J.M. case, once the complaint was filed with the Court, it was, as in *Sullivan* and *Claiborne*, bound to consider the constitutional rights of all the parties.

Five factors in this case reinforce the conclusion that the acts of the New Jersey courts operated to sufficiently involve the state in V.C.'s conduct to constitute "state action." First, the trial court entered an injunction, clearly constituting state action. *Shelly v.*

Kraemer, supra.[6] Once a state does take action, it must do so without violating the constitutional rights of the litigants. When the New Jersey courts were asked to vacate the injunction of the lower court, its subsequent order would bring the painful death of the child under the sanction of the law. New Jersey, before reviewing the Court order enjoining the abortion, was therefore required to consider the rights of the child and the father, and its order was the equivalent of those in *Shelly* and *Sullivan*. The court sanctioned the killing of the child, without considering the rights of child and father. Second, the very life of the child was at stake. Unlike other rights, no redress of grievance could compensate for the impending loss. The Right to Live is unique and the state as the protector of public welfare and safety had a unique and affirmative duty to protect life when requested, *Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson,* 201 A.2d 537 (1964), especially when a court is being asked to *remove* an injunction. The dismissal of the complaint and removal of the injunction surely placed the State's imprimatur on the act of taking the life of this child. see, *Blum v. Yartesky*, 457 U.S. 991, 1003 (1982). Third, the act of

[6] The irony of V.C.'s argument is that she recognizes that an order which interferes with her perceived rights is "state action," but fails to recognize that an order which interferes with the child's rights is state action (see Res.Br. at p. 11).

the private citizen had not yet taken place and could only take place *after* the state acted. This distinguishes those cases where relief is sought after a private citizen has already acted and the state had no real involvement. In fact, V.C. waited to act, and did so only after the Court gave her permission. Fourth, this case does not involve a private entity which sets general policy in a private matter. This case involves a specific, real and present danger to the plaintiff only. Petitioning the court was the only way J.M. could peacefully protect his child. Surely, V.C. does not suggest that J.M. must use force on V.C., the child's life be lost, and he be arrested (in order to have "state action") before he can litigate the interests involved. Finally, the Court, in acting to determine the common law rights of the two parents and the child, where the parents disagreed on the future of the child, exercised its *parens patriae* jurisdiction. Once a court seeks to use its power to determine a dispute, the court itself is subject to the constraints of the equal protection clause, and is required to apply the equal protection of the law to all parties. See, *Kentucky Finance Co. v. Paramount Auto Exchange*, 262 U.S. 544 (1923); *Virginia v. Rives*, 100 U.S. 313 (1880); *Civil Rights Case*, 109 U.S. 3 (1883); *Jersey Shore Medical Center-Fitkin Hospital, et al. v. Estate of Baum*, 84 N.J. 137, 143-145 (1980). New Jersey, therefore, was obliga-

ted to provide equal application of the child's Fourteenth Amendment Rights (and those of J.M.) as well as the New Jersey constitution's rights to life and to defend life. N.J. Const. Art. I, Sec. 1.

(b) Involvement by other Government branches.

New Jersey created the rules of law upon which V.C. relies to violate the rights of J.M. and his child. This Court observed:

> In the typical case raising a state action issue, a private party has taken the decisive step that caused the harm to the plaintiff, and the question is whether the state was sufficiently involved to treat that decisive conduct as state action. *NCAA v. Tarkanian*, 488 U.S. 179, 192 at 192.

In 1978 New Jersey Repealed N.J.S.A. 2A:87-1 which made abortion a high misdemeanor, thereby removing all prohibition against a mother taking the life of her child. New Jersey, in licensing its physicians, specifically gave doctors authority to terminate the life of a child before birth. New Jersey licenses and regulates doctors and hospitals through the Board of Medical Examiners. New Jersey's Administrative Code states that only a physician licensed by the state may perform an abortion. Reg. of Bd. of Med. Exam. 13:35-4.2(b). The regulations affirmatively authorize abortions anytime prior to birth. Even after 20 weeks gestation the only limitation is that the doctor must perform a "D

and E" procedure (always fatal to the child)[7] in a licensed ambulatory care facility and the doctor show proper training. N.J.A.C. 13:35-4.2(g). The state licenses individuals to take the life of a child anytime prior to actual birth.

When New Jersey repealed the anti-abortion statutes, raised (in significant part by direction of the Federal Government) the conduct of abortion to a protected status, and directly authorized the conduct of abortion itself, these actions constituted "state action" because [1] it actively encouraged the conduct which offended the child's rights and those of J.M.; and [2] it immunized the offensive conduct from the ordinary legislative process impermissibly burdening the rights of one class of individuals (children before birth). *Reitman v. Mulkey*, 387 U.S. 369 (1967).

The licensing procedure is itself a significant state involvement in the conduct. This licensing procedure can be distinguished from those found in *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972) and *Jackson v. Met. Ed. Co.*, 419 U.S. 345, 95 S.Ct. 449 (1974). First, the licenses in *Moose Lodge* and *Jackson* were collateral to the actual conduct complained of. Here, the state specifically licenses the precise act resulting in the harm. The

[7] See, *Planned Par., Kansas City v. Ashcroft*, 462 U.S. 476, 483, 103 S.Ct. 2517, 2521.

license procedure more than simply creates a nexus to an entity or individual, it creates a nexus to the conduct which causes the harm. *Jackson*, at 351. Second, in *Moose Lodge* and *Jackson* the private actors performed functions that were outside the functions of the state. Here, it is the specific function of the state to protect the lives of its citizens and to judge if taking a human life is justified. The state, therefore, by giving *express* license to take the lives of children, dealt with activity which is within the unique function of the state.

THE STATEMENT OF THE CASE

A. PROCEDURAL MATTERS

J.M.'s individual case was not the subject of a final order of the New Jersey Supreme Court until March 9, 1993. As a result of the New Jersey Courts bifurcating the case, a petition was filed in this Court in 1992. However, this is the first petition before the Court from an order of the New Jersey Supreme Court which is complete and final on all issues under 28 U.S.C. §1257. *Market Street R. Co. v. Railroad Comm'n*, 324 U.S. 548, 541 (1945); *North Dakota Pharmacy Board v. Snyder's Tows*, 414 U.S. 156, 159 (1973); *Grovey v. Townsend*, 295 U.S. 45, 47 (1935); *Barton v. Maryland*, 395 U.S. 784, 786 (1969). V.C. does not, nor could she, maintain that the filing of a petition in this Court in 1992

operates to deprive the Court of jurisdiction on this petition. Indeed, in 1992 V.C. argued to this Court that it could not review a petition in this case until J.M.'s individual case was finalized and this particular petition was filed (see portion of Brf. of V.C. filed with this Court in 1992 at A-212 to A-217). At that time, V.C. argued that J.M.'s individual claim pending in the Appellate Division of the Superior Court of New Jersey "bars review of petitioner's claim in this Court." (A-214 to A-215).

This is therefore the proper time for a complete review of all of the issues presented in this case, both those relating to J.M.'s individual rights as well as the rights of the child. The New Jersey Supreme Court's treatment of the father's case and the child's case separately could be interpreted as an implied affirmance by that Court that it was dealing with two separate individuals. Nonetheless, all issues arising out of the original case are now before the Court. The petition filed last year on behalf of the child cannot operate to preclude review of any issue now because: [1] all of the issues are present in J.M.'s individual case; and [2] such a ruling would, by necessity, require a holding that the child was a complete, separate individual human being who exhausted all of his or her remedies. To so hold the Court would have had to expressly make such a legal ruling, or must do so now. Such a ruling would

now support the Court granting certiorari in J.M.'s individual case. The alternative implied ruling was the the child lacked capacity to litigate. Whether or not this Court could have in its discretion exercised jurisdiction in 1992, in its discretion, the case is clearly and properly before the Court now. In fact, this is the only opportunity this Court has to review the entire case after the final order of the New Jersey Supreme Court and it presents all of the issues in both the child's case and that of J.M.

Contrary to V.C.'s incorrect assertions, J.M. was never appointed Guardian Ad Litem in this case. No decision to appoint him was reached and no order was entered. Likewise, the original injunction entered on March 9, 1992 was not *ex parte* but on notice to V.C. and W.M.C. (the co-defendant).[8]

B. THE RECORD ON THE SCIENTIFIC AND MEDICAL FACTS.

The statement of V.C.'s attorneys that the scientific evidence is not part of the record in the state court is simply false. See, Res.Br. p. 9, text and n.4. When this case was commenced on March 9, 1992 the petitioner argued that day, and provided certifications to the court, that recent scientific and technological

[8] The court record, although the transcript was never obtained, would reveal that W.M.C. advised the Court it would not appear that day, and the Court entered the injunction against V.C. only after the Court was satisfied that notice requirements were met.

advances show that [1] the life of a child begins at conception; and [2] the child experiences pain as early as eight weeks after conception (see certifications filed with the trial court at A-106 to A-136). After petitioner filed his appeal as of right, the Appellate Division granted J.M. leave to supplement the record with a brief containing extensive scientific and medical citations and discussion (order at A-186). V.C. attempted and failed to convince the New Jersey Supreme Court to exclude the scientific and medical citations and argument. On December 8, 1992 that court, over V.C.'s strenuous argument, granted leave to J.M. to file a brief containing the latest scientific and medical evidence [order at A-218; portions of brief pursuant to leave of court at A-304 to A-358].

Although a fact question, no state can bind this Court on the question of when life begins because of its implications for the Federal Constitutional questions. The fact that this case comes to the Court with a record preserved on the question but without a state court's preconceived finding is one of its procedural strengths. This Court can make its own determination free of a biased record, and can do so in any manner the Court deems just, either by special briefing, a specially defined remand, or any procedure designed to arrive at the truth.

WHY PETITION SHOULD BE GRANTED.

A.

In this case the respondent has not made a serious attempt to rebut the scientific fact that the child whose life was terminated was a human being able to experience pain. Instead, she argues that it is irrelevant that abortion is the intended and unjustified taking of the life of a human being who experiences pain. Worse, V.C. attributes these sentiments to this Court. To underscore her argument that it is this Court which finds these facts irrelevant, V.C. has filed a motion to personally sanction J.M. and his counsel because, she argues, J.M.'s presentation of these facts, and the rights of the child, to the Court is "frivolous". There can be little doubt that denial of J.M.'s petition under these circumstances may be interpreted by other courts, and the public, as this Court's finding the intended and painful termination of the life of a human being as irrelevant to justice. In fact, this Court has never determined when life begins, and never stated that it was irrelevant.[9]

B.

The arguments of V.C. as to why this Court should not grant certiorari rest in the final analysis upon one common element: that this Court has already ruled that a woman's privacy interest, bal-

[9] Justice Stephens has specifically referred to the ability of the child to experience pain as a relevant fact. *Webster v. Reproductive Health Services*, 109 S.Ct. 3040, 3084, Stephens, J., concurring in part and dissenting in part.

anced against the state' interest in "potential life" supports a broad abortion right. V.C. simply ignores the entire point of J.M.'s argument. All of the prior case law she cites deals exclusively with balancing a mother's interest against that of the state - an interest described as a generalized interest in the potential life. J.M. litigates the personal and real interest his child has in actual life. Nowhere in the case law has this Court balanced the child's interest in life with the identified interests of the child's mother. The interest of the state identified in *Roe v. Wade*, 410 U.S. 113 (1973) was described as merely an interest in "potential life." *Roe*, at 159. Likewise, in *Planned Parenthood of Central Missouri et al v. Danforth*, 428 U.S. 52 (1976), the majority addressed only the *state's interests*, never the personal interests of the child, when it examined only the state's ability to delegate the *state's interest* to a husband:

> ...[t]he state cannot "delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy." [cite omitted]. Clearly, ...the state cannot delegate authority to any particular person, even the spouse, to prevent abortion during that same period. *Danforth*, at 69.

Likewise, in *Planned Parenthood v. Casey*, 505 U.S. ___, 112 S.Ct. 2791 (1992) the Court only addressed the state's interest. Consequently, the Court's entire analysis concerning "spousal con-

sent" did not involve the child's interest in life, but only the right of one spouse imposing a decision upon the other. *Casey*, 112 S.Ct. at 2826-2831. Whether or not this Court can be said to have truly addressed a father's interest in the life of his child, the Court has clearly never addressed the child's personal interest in life.

V.C. also misinterprets the point of the state's *parens patriae* jurisdiction. If the child is in fact a human being, then the character of the state's interest must be described differently than it has been to date, because once the humanity of the child is recognized, the state's interest is clearly that of its *parens patriae* jurisdiction, one protecting the actual life of the child. The point of *Snapp v. Puerto Rico*, 458 U.S. 592 (1982) is that once the state's *parens patriae* jurisdiction is identified as the true interest of the state, then it is clear the child must have a personalized interest in life as well. *Snapp* at 600 n. 8.

C.

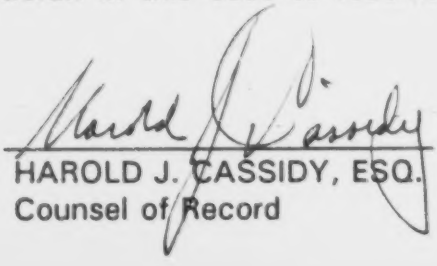
This case should be reviewed by this Court because, among other reasons, it presents questions of first impression only this Court can decide, and until the question of the child's interest in life is addressed by the Court the law of abortion will always remain unresolved. *Casey* may have resolved the legal question of a

woman's interests balanced against those of the state, but the interests of a mother remain examined in a vacuum until they are balanced against the child's interest in life. Until this Court answers the question specifically reserved by *Roe* - when does the life of the child begin - it can never be credibly asserted that it has finally decided the abortion question.

More importantly, this case and the issues it presents confront us with a most profound, yet fundamental, question of justice. How can a state like New Jersey authorize the painful dismemberment and death of children before and after the age of viability without our ever permitting the child's parent to speak for the child by litigating the child's right to live? J.M. urges this Court to rule on the question of the child's humanity, the right of a parent to litigate the child's rights, and the limits on government to decide which persons' lives have no value.

CONCLUSION

V.C.'s brief fails to address the real issues of this case. Justice requires that this Court grant certiorari in this case to resolve them.



HAROLD J. CASSIDY, ESQ.
Counsel of Record